

Attorney Docket No.: RTS-0339
Inventors: Dobie, Kenneth W.
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REMARKS

Claims 1, 2, 4-10, and 12-15 are pending in the instant application. The pending claims have been subjected to a Restriction Requirement under 35 USC §121 and 37 C.F.R. 1.141, as containing multiple independent sequences, comprising multiple inventions.

Specifically, the Examiner suggests that although all of the sequences encompassed in claim 1 target and modulate expression of the target sequence CD36L1 of SEQ ID NO:3, these sequences are considered to be unrelated. Each sequence encompassed by claim 1 is suggested to be structurally and functionally independent and distinct. The Examiner suggests that each sequence has a unique nucleotide sequence, it is further suggested that each sequence targets a different and specific region of the molecule encoding CD36L1, and finally the Examiner suggests that each sequence, upon binding to the molecule encoding CD36L1, functionally modulates the expression of the gene to varying degrees.

The Examiner further suggests that a search of more than one of the claimed sequences presents an undue burden on the Patent and Trademark Office because of the complex nature of the search required and because a search for art related to one region of

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the CD36L1 molecule would not reveal art related to another region. The Examiner requires that Applicant elect one target region from claim 1.

Applicant respectfully traverses this restriction requirement.

MPEP 803 states that an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct. MPEP 803 further states that if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

MPEP 802.1 defines "independent" as having no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and an apparatus incapable of being used in practicing the process.

MPEP 802.1 defines "distinct" as two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice,

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process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, and are patentable over each other.

Additionally, it has been determined that normally ten sequences are deemed to constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences can be examined in a single application without restriction.

The Examiner acknowledges that the sequences of claim 1 each target and modulate expression of the same target sequence CD36L1 (SEQ ID NO:3). By definition, the sequences cannot be independent because they all target and modulate the same single sequence namely SEQ ID NO:3. Therefore, there is a disclosed and acknowledged relationship between the sequences.

There would be no additional search burden on the Examiner because any search relating to CD36L1 (SEQ ID NO:3) would necessarily identify all of the art relating to all of the sequences recited in claim 1.

Applicant respectfully requests reconsideration and withdrawal of the restriction requirement.

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However, in an earnest effort to be completely responsive and to facilitate prosecution of this application, Applicant elects to prosecute nucleobases 169 through 1594 of the coding region of a nucleic acid encoding CD36L1 (SEQ ID NO:3).

Respectfully submitted,

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